IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
CONTEMPT PETITION NO.21 OF 2006
IN
WRIT PETITION NO. 1072 OF 2001
DR. ABRAHAM PATANI & ANR. ..PETITIONERS
V/S
MUNICIPAL CORPORATION OF
BRIHANMUMBAI & ORS. ..RESPONDENTS
H.J. THAKKAR, SR. ADV. WITH SHAILESH SHAH I/B SOLOMON & CO. FOR PETITIONERS.
K.K. SINGHAVI, SR. ADV. WITH MS. SHOBHA AJITKUMAR FOR RESP. NO. 1 & 2.
R.M. SAWANT, GP FOR RESP. 3.

CORAM : S.K. SHAH, J.
DATE : 18TH AUGUST, 2006.

P.C.

1. Heard the learned counsel on both sides.

. This contempt petition has been taken out, alleging that the Respondents have committed contempt of the order dated 18th October, 2002, passed in Notice of Motion No. 451 of 2002, in Writ Petition No. 1072 of 2001. This writ petition was filed by Vyaravali Village Development Association and others, challenging the Respondent Corporation's Resolution No.1167,

: 2 :

dated 9/3/2001, whereby there was a proposal to acquire petitioner's land for the purpose of construction of the road. There was a prayer for quashing and setting aside the said resolution. In that writ petition the Notice of Motion No. 451 of 2002 was taken out by the petitioner herein. In the said Notice of Motion the following order was passed on 18-10-2002:-

> " Respondent No. 2, viz. Municipal Corporation of Greater Bombay, shall be at liberty to reconsider Resolution No. 1167 dated 9th March, 2001. However, if any fresh resolution is passed withdrawing the earlier resolution dated 9th March, 2001, (Resolution No. 1167), such fresh resolution shall not be given effect to without the leave of this Court".

2. Subsequent thereto, the Respondent No.2 Corporation passed a resolution No.1117, dated 28th October, 2002 for acquisition of the land affected by 18.30 mt. wide D.P. Road and 18.30 mt. new wide road line from Mahakali Caves Road to Central MIDC Road at Andheri (E).

: 3 :

3. Subsequent to this resolution having been passed, the Petitioners filed an affidavit alleging that, as the Respondent No. 2

Corporation passed Resolution No. 1117 dated 28/10/2002 repealing the earlier resolution, this writ petition has become infructuous. This court passed a detailed order, dated 10th December, 2002, which reads thus:-

> "3. We considered the submissions of the learned counsel for the parties. It may be observed that vide our order dated 18.10.2002 passed in Notice of Motion No. 451/2002 in writ petition No. 1072/2001, we permitted the Municipal Corporation of Greater Bombay to reconsider the resolution No. 1167 dated 9.3.2001 and further observed that if any fresh resolution was passed withdrawing the earlier resolution dated 9.3.2001, such fresh resolution would not be given effect to without leave of this court.
>
> 4. The Petitioners do not want to prosecute the writ petition in
>
> : 4 :
>
> view of resolution dated 28.10.2002 passed by Respondent No. 2 (Municipal Corporation) as in their opinion, on passing of the said resolution, writ petition has become infructuous. We do not intend to go into the legality, correctness and implementation of the said resolution dated 28/10/2002 in the present writ petition as these aspects are raised in writ petition No. 3060/2002 which shall be heard on its own merits independent of the present writ petition which has become infructuous".

4. The contention of the petitioner is that the Respondent in violation of the order dated 18.10.2002 passed in the Notice of Motion No. 451 of 2002, issued notifications under section 4 and section 6 of the Land Acquisition Act, for acquisition of portions of the properties of the Petitioners by acting upon the fresh resolution, dated 28th October 2002 without taking leave of this court, as directed in the said Notice of Motion and thus committed contempt.

: 5 :

5. As against this the learned Counsel for the Respondents submit that the aforesaid writ petition No. 1072 of 2001 is already disposed of by order, dated 10.12.2002. He further submits that as per the liberty granted by this court the Respondents reconsidered the resolution No. 1167 dated 9/3/2001 and passed Resolution No. 1117 dated 28.10.2002 repealing the earlier resolution No. 1167 dated 9/3/2001 and sanctioning acquisition of land affected by new Road Line at

Andheri (East) from Mahakali Caves Road, and, in view thereof the writ petition became infructuous. He further submits that as the order dated 10.12.2002 is passed disposing of the Notice of Motion No. 451 of 2002 the order dated 18.10.2002 has become non-exist. He further states that by order dated 10th December, 2002 all the contentions are kept open to be agitated in writ petition No. 3060 of 2002 relating to the legality and validity of resolution No.1117.

6. As regards the said Notice of Motion, it was disposed of by order dated 18th October,2002. The Respondents have challenged the fresh resolution dated 28.10.2002 by their writ petition No. 3060 of 2002.

7. Prima facie there is no evidence of intentional violation of the order of the court as stated above. Moreover with the disposal of the writ petition No. 1072 of 2001 the order passed in Notice of Motion No. 451/2002 became non-exist and inoperative.

8. In the circumstances, I find no merit in the contempt petition. Hence, it is dismissed.

9. Any observation made in this order will not come in the way of prosecuting the writ petition No. 3060 of 2002.

(S.K. SHAH,J.)